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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,)	No: CR11-0736 SI
)	
v.)	THE UNITED STATES' SENTENCING
)	MEMORANDUM
BRIAN SIMONESCHI,)	
)	Hearing: February 10, 2012
)	Time: 11:00 am
Defendant.)	Court: Hon. Susan Illston

INTRODUCTION

Defendant Brian Simoneschi comes before the Court to be sentenced following his conviction for failing to register as a sex offender with enhancement for crime of violence, in violation of 18 U.S.C. § 2250(a) and (c). Tosti was convicted based on his guilty plea pursuant to a plea agreement under Fed. R. Crim. P. 11(c)(1)(C). The Probation Office has calculated a Total Offense Level of 19, and a Criminal History Category of III, yielding a sentencing guidelines range of 37-46 months, with a mandatory consecutive five-year prison term to be imposed for committing a crime of violence while in a failure to register status.

1 The Probation Office recommends a sentence of 97 months imprisonment, the low end of
2 the guidelines range, followed by five years on supervised release. The parties and Probation
3 agree that Simoneschi should pay \$6,000 in restitution to the minor victim in this case.

4 The United States agrees with the Probation Office's sentencing recommendations.

5 **STATEMENT OF FACTS**

6 Defendant Brian Simoneschi began an online relationship with a 14-year-old girl in
7 October, 2008, when he was 26 years old and in the army. Simoneschi's contact with the girl
8 came just two months after he was sentenced to probation on his previous conviction for
9 masturbating while watching children play at a playground. Within weeks of meeting the girl
10 online, Simoneschi arranged a meeting with her, traveled to meet her, and took her to a Motel 6
11 where they had sexual intercourse. Over the following six months, Simoneschi had sex with the
12 victim about seven times, including oral and vaginal intercourse. In November or December,
13 2008, Simoneschi went AWOL from the army, and spent the next six months living in a motel
14 and having sex with the 14-year-old victim. Simoneschi has admitted that he knew the victim
15 was 14 years old while he was having sex with her. When the victim told Simoneschi that she no
16 longer wanted to have sex with him, Simoneschi followed her home, stormed into her parents'
17 apartment, and assaulted the victim's stepfather. He was arrested but released several days later,
18 and lived as a transient from the next several months until his arrest for lewd acts with a minor in
19 October, 2009, after which he has been in continuous custody.

20 Simoneschi was a registered sex offender from the time he met the minor victim, but
21 stopped registering as required from the time he went AWOL from the army until his arrest at the
22 victim's apartment.

23 **SENTENCING RECOMMENDATION**

24 Following the Supreme Court's decision in *United States v. Booker*, 543 U.S. 220, 245
25 (2005), this Court may consider any of the sentencing factors set forth in 18 U.S.C. § 3553(a)
26 when imposing sentence, irrespective of the sentencing guidelines calculation applicable to the
27 offense of conviction. *United States v. Carty*, 520 F.3d 984, 991 (9th Cir. 2008). These
28 sentencing factors include the nature and circumstances of the offense and the history and

1 characteristics of the defendant, the need for the sentence imposed to reflect the seriousness of
2 the offense, to promote respect for the law, to provide just punishment for the offense, and to
3 protect the public from further crimes of the defendant.

4 **I. THE GUIDELINES CALCULATION.**

5 At the beginning of the sentencing process, the Court must properly calculate the
6 sentencing guidelines range, based on the defendant's Criminal History Category and the
7 guidelines applicable to the defendant's particular offense. There does not appear to be any
8 dispute that the appropriate Criminal History Category is III, and that the appropriate offense
9 level is 19, yielding a sentencing guidelines range of 97-106 months when the five year
10 mandatory sentencing enhancement is included.

11 **II. APPLICATION OF THE STATUTORY SENTENCING FACTORS.**

12 The statutory sentencing factors support the 97-month sentence recommended by
13 Probation and the United States in this case. Two factors in particular – the nature of the offense
14 and the need to protect the public – predominate and suggest that a low-end guideline sentence is
15 necessary.

16 The offense in this case, failure to register as a sex offender, is noteworthy because it was
17 done specifically so that Simoneschi could avoid detection while he victimized a 14-year-old girl.
18 There is no dispute that Simoneschi knew about his registration obligations, as he had registered
19 at least twice before. And there is no reasonable doubt that Simoneschi knew that moving from
20 Fort Bragg, North Carolina, where he was stationed, to California would trigger a registration
21 obligation. The sole reason that Simoneschi went AWOL from the army and stopped registering
22 as a sex offender was so that he could cross the country undetected and have sex with a minor.
23 This case, therefore, is different from other failure to register cases in which, for example, the
24 defendant can plausibly claim that he does not understand, or is confused by, the intricacies of
25 the federal sex offender registration statutes. Here, Simoneschi knew exactly what he was doing,
26 and it is a logical conclusion that would never have fled from his army base, or failed to register,
27 if not for his sexual interest in the minor victim.

1 The need to protect the public from this defendant is another substantial factor in
2 determining the sentence in this case. Simoneschi has admitted to a sexual interest in minors,
3 and he has two previous convictions for crimes in which he has acted on that interest. His
4 second crime began just weeks after his sentencing for the previous crime, and his failure to
5 register violation took place just two months after that. In her letter to the Court, the minor
6 victim describes a relationship that was less like the “consensual” relationship portrayed by the
7 defense, and more like a stalking crime. Simoneschi has a compulsion to pursue minors that he
8 appears unable to control, and the Court should protect the public from him.

9 It is true that Simoneschi has already served some time for his molestation of the minor
10 victim, although the sentence was rather short, considering the crime and his previous criminal
11 history. But Simoneschi’s failure to register was a substantial component in that crime, because
12 it allowed him to live for six months in a motel undetected, and to continue molesting the minor
13 victim until she finally told him that she had had enough. In this context, the registration
14 requirement is not an administrative abstraction; it is the only way for law enforcement to keep
15 track of sexual predators and possibly prevent them from committing additional crimes. Repeat
16 sexual predators like Simoneschi must receive the message, in the strongest possible terms, that
17 they cannot decide when they will and will not comply with the sex registration requirements.

18 CONCLUSION

19 The United States recommends imposition of a 97-month sentence, followed by five
20 years on supervised release and a restitution payment of \$6,000 to the minor victim in this case.

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22 DATED: February 3, 2012

Respectfully submitted,

23 MELINDA HAAG
24 United States Attorney

25 /s/
26 OWEN P. MARTIKAN
27 Assistant United States Attorney
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